

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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**GEORGE ANTHONY GUTIERREZ,**

**Plaintiff,**

**v.**

**9:10-CV-488  
(FJS/RFT)**

**DEBORAH G. SHULT, Warden, FCI Raybrook;  
KEVIN HAYES, Counselor, FCI Raybrook; and  
JOHN DOE, Correctional Officer, FCI Raybrook,**

**Defendants.**

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**APPEARANCES**

**OF COUNSEL**

**GEORGE A. GUTIERREZ  
43840-080**

FCI Petersburg Virginia  
P.O. Box 1000  
Petersburg, Virginia 23804  
Plaintiff *pro se*

**OFFICE OF THE UNITED  
STATES ATTORNEY**  
U.S. Courthouse & Federal Building  
P.O. Box 7198  
100 South Clinton Street  
Syracuse, New York 13261-7198  
Attorneys for Defendants

**CHARLES E. ROBERTS, AUSA**

**SCULLIN, Senior Judge**

**ORDER**

Plaintiff filed this action, pursuant to *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971), on April 26, 2010. *See* Dkt. No. 1. On October 8, 2010, Defendants filed a motion to dismiss for failure to state a claim or, in the alternative, for summary judgment on the ground that Plaintiff had not exhausted his administrative remedies as

the Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a) required him to do. *See* Dkt. No. 18-1. On September 21, 2011, Magistrate Judge Treece issued a Report-Recommendation and Order, in which he recommended that the Court grant Defendants' motion and dismiss the complaint. *See* Dkt. No. 25. Plaintiff did not file any objections.

When a party does not object to a magistrate judge's report-recommendation, the court reviews that report-recommendation for clear error or manifest injustice. *See Linares v. Mahunik*, No. 9:05-CV-625, 2009 WL 3165660, \*10 (N.D.N.Y. July 16, 2009) (citation and footnote omitted). After conducting that review, "the Court may 'accept, reject, or modify, in whole or in part, the . . . recommendations made by the magistrate judge.'" *Id.* (quoting 28 U.S.C. § 636(b)(1)(C)).

The Court has reviewed Magistrate Judge Treece's September 21, 2011 Report-Recommendation and Order for clear error and manifest injustice; and, finding none, the Court hereby

**ORDERS** that Magistrate Judge Treece's September 21, 2011 Report-Recommendation and Order is **ACCEPTED in its entirety** for the reasons stated therein; and the Court further

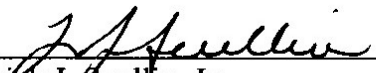
**ORDERS** that Defendants' motion for summary judgment is **GRANTED**; and the Court further

**ORDERS** that the Clerk of the Court shall enter judgment in favor of Defendants and close this case; and the Court further

**ORDERS** that the Clerk of the Court shall serve a copy of this Order on the parties in accordance with the Local Rules.

**IT IS SO ORDERED.**

Dated: October 24, 2011  
Syracuse, New York

  
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Frederick J. Scullin, Jr.  
Senior United States District Court Judge